

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALLEN HAMMLER,
Plaintiff,

v.

RALPH DIAZ, et al.,
Defendants.

Case No. 2:20-cv-01890-KJM-JDP (PC)

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 6, 2023, the magistrate judge filed findings and recommendations, F&R, ECF No. 28, which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff has filed objections to the findings and recommendations. Obj., ECF No. 30.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. The magistrate judge recommended the court dismiss plaintiff's claims against defendant Chavez and other members of the "IR SNY" prison gang because they are not state actors and, as such, plaintiff cannot bring a § 1983 claim against them. F&R at 5. This court agrees plaintiff cannot bring § 1983 claims against non-state actors.

1 However, as plaintiff notes in his objections, Obj. at 1–2, plaintiff brings a state law claim for
2 assault against these defendants. First Am. Compl. (FAC) at 30, ECF No. 13. It is unclear from
3 the complaint if plaintiff brings any other state law claims against these defendants. If the facts
4 underlying a state law claim share the same nucleus of operative fact as those underlying the
5 federal claims, this court may exercise its supplemental jurisdiction to hear the state law claim
6 against defendants. *See United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966); *see*
7 *also Andrews v. Columbia Mach. Inc.*, No. 17-08100, 2018 WL 2765493 (D. Ariz. June 8, 2018).
8 Thus, the court declines to adopt the magistrate judge’s findings and recommendations and refers
9 the matter back to the magistrate judge to examine the question of supplemental jurisdiction.

10 Accordingly, IT IS HEREBY ORDERED:

11 1. The findings and recommendations filed January 6, 2023, are denied; and

12 3. This matter is referred back to the assigned magistrate judge for all further pretrial
13 proceedings consistent with this order.

14 DATED: April 27, 2023.

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17 CHIEF UNITED STATES DISTRICT JUDGE
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